

residential customers.⁴³ Further, the Commission has repeatedly determined that most of the network information of use to ISPs is controlled by the LECs, not the interexchange carriers,⁴⁴ and this same conclusion is reflected in the network disclosure requirements of Section 251(c)(5), which Congress made applicable only to incumbent LECs.⁴⁵

In addition, as the Commission itself has found, the all-carrier rule lacks adequate specificity to function efficiently, is difficult to enforce, and is unclear in its application.⁴⁶ Worse, the all-carrier rule could have the effect of inhibiting or precluding a carrier from achieving efficiencies

⁴³ See *Tariff Forbearance Order*, 11 FCC Rcd at 20743-44, ¶¶ 21-22.; *AT&T Nondominance Order*, 11 FCC Rcd at 3303-05, ¶¶ 57-66 ("competitors have or can easily acquire sufficient additional capacity in a relatively short time period"; "customers are highly demand-elastic and will switch to or from AT&T in order to obtain price reductions and desired functions").

⁴⁴ See FNPRM, ¶ 116; *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 2449, 2450, ¶ 4 (1988); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 2 FCC Rcd 3035, 3042, ¶ 45 (1987) ("*Computer III Phase I Reconsideration Order*").

⁴⁵ 47 U.S.C. § 251(c)(5).

⁴⁶ See *Local Competition Second Report and Order*, 11 FCC Rcd at 19496, ¶ 231 (1996) ("we believe that the all carrier rule standard lacks adequate specificity to function efficiently Requiring carriers to litigate the meaning of 'reasonable' notice through our complaint process on a case-by-case basis might slow the introduction and implementation of new technology and services, and burden both carriers and the Commission with potentially lengthy, fact-specific enforcement proceedings"). Indeed, AT&T believes that not all non-dominant carriers have been adhering to this rule.

in network configuration through the integration of basic and enhanced networks, which would benefit the carrier's customers through lower cost operations. So long as an appropriate comparable interface is available to unaffiliated ISPs and no new or similar functionality is denied them, there is no public interest goal to be served by continuing to deny non-dominant interexchange carriers the ability to optimize network efficiencies by integrating their basic and enhanced networks without regulatory constraints. At bottom, as applied to non-dominant interexchange carriers, the all-carrier rule imposes needless costs on carriers and their customers without any commensurate benefit to the public.

Thus, it is apparent that the all-carrier rule has outlived its usefulness as to the non-dominant interexchange market. Accordingly, consistent with the Commission's statutory obligation to eliminate regulations that are "no longer necessary in the public interest as the result of meaningful economic competition,"⁴⁷ the Commission should revise its *Computer II* all-carrier rule to exclude non-dominant interexchange carriers.

CONCLUSION


For the reasons stated above, the Commission should proceed cautiously and only reduce or eliminate rules and regulatory requirements applicable to the ILECs that have clearly

⁴⁷ 47 U.S.C. § 161(a)(2).

become unnecessary, and for which appropriate safeguards (to the extent they are needed to ensure competition) are not subject to legal challenge. Moreover, because the existing all-carrier rule is not necessary in the interexchange market to ensure competitive choice and nondiscriminatory access, it should be eliminated for non-dominant interexchange carriers.

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